

Original filed 9/26/06

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRUCE CERNY,)	C 05-3892 JF (PR)
Petitioner,)	ORDER DENYING PETITIONER'S
vs.)	MOTION FOR
CALIFORNIA BOARD OF PRISON)	RECONSIDERATION
TERMS,)	
Respondent.)	
_____)	(Docket No. 4)

Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the California Board of Prison Terms' 2003 decision finding him unsuitable for parole. The parole hearing occurred at the California State Prison - Folsom located in Represa, California. Petitioner is currently incarcerated at Chuckawalla Valley State Prison in Blythe, California located in Riverside County, which is within the venue of the Central District of California.

On October 14, 2005, the Court transferred the instant petition to the Central District of California, the location of petitioner's confinement. Venue in a habeas action is proper in either the district of confinement or the district of conviction, 28 U.S.C. § 2241(d); however, the district of confinement is the preferable forum to review the

1 execution of a sentence, such as a parole denial claim. See Habeas L.R. 2254-3(a);
 2 Dunne v. Henman, 875 F.2d 244, 249 (9th Cir. 1989). Petitioner filed a motion for
 3 reconsideration as to the Court's transfer order.

4 DISCUSSION

5 Where the court's ruling has not resulted in a final judgment or order,
 6 reconsideration of the ruling may be sought under Rule 54(b) of the Federal Rules of
 7 Civil Procedure, which provides that any order which does not terminate the action is
 8 subject to revision at any time before the entry of judgment. See Fed. R. Civ. P. 54(b).
 9 "Reconsideration is appropriate if the district court (1) is presented with newly
 10 discovered evidence, (2) committed clear error or the initial decision was manifestly
 11 unjust, or (3) if there is an intervening change in controlling law." School Dist. No. 11
 12 v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

13 In the Northern District of California, no motion for reconsideration may be
 14 brought without leave of court. See Civil L.R. 7-9(a). Under Civil Local Rule 7-9, the
 15 moving party must specifically show: (1) that at the time of the motion for leave, a
 16 material difference in fact or law exists from that which was presented to the court
 17 before entry of the interlocutory order for which the reconsideration is sought, and that
 18 in the exercise of reasonable diligence the party applying for reconsideration did not
 19 know such fact or law at the time of the interlocutory order; or (2) the emergence of new
 20 material facts or a change of law occurring after the time of such order; or (3) a manifest
 21 failure by the court to consider material facts which were presented to the court before
 22 such interlocutory order. See Civil L.R. 7-9(b).

23 The Court concludes that Petitioner has failed to establish any of the criteria set
 24 forth above. Accordingly, Petitioner's motion for reconsideration (docket no. 4) is
 25 DENIED.

26 IT IS SO ORDERED.

27 DATED: 9/21/06 _____

/s/jeremy fogel

 JEREMY FOGEL

United States District Judge

1 A copy of this ruling was mailed to the following:

2 Bruce Cerny
3 C-21979
4 Chuckawalla Valley State Prison
5 P.O. Box 2349
6 Blythe, CA 92226
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